

1 James McCullagh, *pro hac vice*
jmccullagh@perkinscoie.com
2 Joseph Cutler, *pro hac vice*
jcutler@perkinscoie.com
3 PERKINS COIE LLP
1201 Third Avenue, Suite 4800
4 Seattle, WA 98101
Telephone: 206.359.8000
5 Facsimile: 206.359.9000

6 David P. Chiappetta, Bar No. 172099
dchiappetta@perkinscoie.com
7 Lisa D. Olle, Bar No. 228551
lolle@perkinscoie.com
8 PERKINS COIE LLP
Four Embarcadero Center, Suite 2400
9 San Francisco, CA 94111-4131
Telephone: 415.344.7000
10 Facsimile: 415.344.7050

11 Attorneys for Plaintiff
12 FACEBOOK, INC.

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

17 FACEBOOK, INC., a Delaware
18 corporation,

19 Plaintiff,

20 v.

21 JOHN DOES 1-10, individuals; and JOHN
DOES 11-20, corporations,

22 Defendants.

Case No. C-07-03404 HRL

**DECLARATION OF JOSEPH CUTLER IN
SUPPORT OF MOTION FOR LEAVE TO
TAKE FURTHER DISCOVERY, TO ISSUE
LETTERS ROGATORY, AND TO
CONTINUE CASE SCHEDULING
CONFERENCE**

Date: October 23, 2007
Time: 10:00 a.m.
Dept.: 2, 5th Floor
24 Before: Honorable Howard R. Lloyd

25
26 Joseph Cutler declares:
27
28

1 1. I am an attorney at the law firm of Perkins Coie LLP, and represent Facebook, Inc.
2 ("Facebook") in this matter. I am competent to make this declaration.

3 2. On September 6, 2007, I sent a preservation request to Look Communications Inc.,
4 ("Look") the ISP of record for IP address 207.136.118.110. A true and correct copy of the letter I
5 sent to Look on behalf of Facebook is attached hereto as Exhibit A.

6 3. On September 6, 2007, I sent a preservation request to Rogers Cable
7 Communications Inc., ("Rogers") the ISP of record for IP address 74.117.158.224. A true and
8 correct copy of the letter I sent to Rogers on behalf of Facebook is attached hereto as Exhibit B.

9 4. On September 10, 2007, I received an email from Dana Drake, Senior Law Clerk
10 for Rogers Communications Inc., informing me that the information related to IP address
11 74.117.158.224 had been preserved, but that Rogers Communications would not provide me with
12 the subscriber information or server log data for that IP address unless and until Facebook
13 obtained a court order from a Canadian court in Ontario via service of letter rogatory. A true and
14 correct copy of the e-mail I received from Dana Drake is attached hereto as Exhibit C. I
15 understand that Look Communications Inc. has also preserved the information related to IP
16 address 207.136.118.110 and that they also require a court order from a Canadian court in order
17 to release the requested information to Facebook.

18 5. Attached hereto as Exhibit D are two true and correct copies of the proposed letter
19 rogatory to Look Communications Inc.

20 6. Attached hereto as Exhibit E are two true and correct copies of the proposed letter
21 rogatory to Rogers Communications Inc.

22 7. The information that Facebook has received to date is inconclusive, but leads
23 Facebook to believe that additional relevant and necessary information to identify defendants will
24 be obtained in response to its request for information from Rogers and Look.

25 8. I have investigated the process for obtaining a court order from a Canadian court
26 authorizing the release of information requested by Facebook and understand once we provide the
27 the letters rogatory with the U.S. court's seal affixed to Facebook's Canadian counsel, it usually
28

1 takes approximately one month to receive permission to issue a subpoena to obtain evidence or
2 information from an Internet Service Provider.

3 9. In addition to the approximately four weeks needed to obtain a subpoena from a
4 Canadian court once this court authorizes the additional discovery, I expect that it will take
5 approximately two weeks for Rogers and Look to respond to the subpoenas. Once Facebook
6 receives this information from Rogers and Look, it will need to analyze the information and
7 amend its complaint to identify the then known defendants, and serve the defendants. The
8 defendants will then have the time allotted by the Rules of Civil Procedure to respond to the
9 complaint.

10 10. Facebook has worked diligently to discover the identities of the John Does in this
11 suit, including sending a subpoena to Accretive Technology Group, Inc. ("Accretive"),
12 corresponding at length with Accretive's technical staff and counsel, and reviewing the
13 documents and information produced by Accretive. Facebook is committed to identifying,
14 naming, locating, and serving the defendants in this case as expeditiously as possible.

15 11. Given the challenges presented by the Doe defendants' efforts to conceal their true
16 identity, Facebook has not yet been able to identify defendants, but believes that it should be able
17 to do so within 8 weeks of the court's order permitting Facebook to conduct additional discovery.
18 Facebook will promptly seek to serve defendants. In light of the difficulties that Facebook has
19 encountered and its reasonable belief that it will take at least 8 to 10 weeks to identify and serve
20 defendants, Facebook requests that the court continue the case management conference deadline
21 from October 2, 2007 to December 24, 2007.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24
25 DATED this 20th day of September 2007, at Seattle, Washington.

26
27 /s/
Joseph Cutler